



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 31, 1962

Honorable H. R. Nieman, Jr.
Executive Director
State Building Commission
Austin, Texas

Opinion No. WW-1518

Re: Whether appropriated funds
are available to pay the
fees as set forth in submit-
ted Purchasing Voucher to
Robert L. Burns for conduct-
ing condemnation proceedings.

Dear Mr. Nieman:

You have requested the opinion of this office concerning the payment of a claim for professional services rendered to the State Building Commission in its land acquisition program. According to the information contained in your request, this claim is for professional services rendered the State Building Commission in condemnation proceedings and other related matters. The Comptroller of Public Accounts has refused to pay the claim out of an appropriation expiring August 31, 1960. The claim was sworn to on the 12th day of September, 1962, and approved for payment by you on September 18, 1962, and presented to the Comptroller for payment during the month of September, 1962.

The contract in question is valid. Attorney General's Opinion No. WW-978 (1961). No question, however, is raised concerning the validity of the contract nor the validity of the claim presented. The only question raised is whether this particular claim may be paid out of an appropriation expiring August 31, 1960. In Attorney General's Opinion No. WW-978 (1961) it was held, "this being the case, the Comptroller is authorized to make payments for these services services similar to those presented in the instant case", subject to the restrictions of Article 4357, Vernon's Civil Statutes.

Article 4357, Vernon's Civil Statutes, provides that:

"No claim shall be paid from appro-
priations unless presented to the Comptroller

for payment within two years from the close of the fiscal year for which such appropriations were made. Any claim not presented for payment within such period may be presented to the Legislature as other claims for which no appropriations are available."

You are therefore advised that the Comptroller of Public Accounts is not authorized to pay the claim submitted with your request out of appropriations expiring on August 31, 1960, since such claim was not presented within "two years from the close of the fiscal year August 31, 1960."

It is noted that Article 4357 also provides:

"It is specifically provided, however, that as to all appropriations relating to new construction contracts, and to repair and remodeling projects which exceed the sum of Twenty Thousand Dollars (\$20,000.00), including in either instance furniture and other equipment, architects' and engineering fees and other related costs, any claim may be presented for payment within four (4) years from the close of the fiscal year for which such appropriations were made."

These last quoted provisions, however, have no application to the claim involved in your request, since the claim does not involve "new construction contracts" nor "repair or remodeling projects." Instead, the claim involves professional services rendered in the acquisition of land.

This office does not have sufficient information before it to determine whether the payment of this claim may be payable out of an unexpired appropriation or whether this claim must be presented to the Legislature for payment. You are therefore further advised that this opinion is limited strictly to the question of whether this claim is payable out of an appropriation which expired on August 31, 1960.

SUMMARY

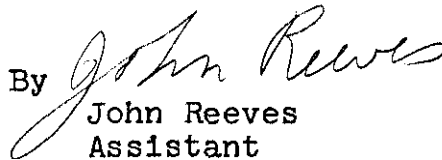
The Comptroller of Public Accounts is not authorized to issue a warrant in payment of a claim presented to

Hon. H. R. Nieman, Jr., page 3 (WW-1518)

him in September, 1962, against
an appropriation which expired on
August 31, 1960. Article 4357,
Vernon's Civil Statutes.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:mkh:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Pat Bailey
Dudley McCalla
Norman Suarez
Tom Peterson

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore